IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 15892 of 2006(P)

PETITIONER:

DIVAKARAN, S/O.KUTTAPPAN,
MULLASSERI HOUSE, VENGOLA KARA AND VILLAGE,
KUNNATHUNADU TALUK.

BY ADV. SRI.P.C.HARIDAS

RESPONDENTS:

M.K.BEERAS, S/O.KOCHALY, MOOTHADAM HOUSE
VENGOLA KARA AND VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.RAJESH VIJAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.15892/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE EXECUTION PETITION IN EP. NO.125/05 IN OS. 9/05 OF MUNSSIF COURT PERUMBAVOOR.

EXT.P2:- COPY OF THE OBJECTION TO EXT.P1 FILED BY THE PETITIONER.

EXT.P3:- COPY OF THE DEPOSITION OF THE RESPONDENT.

EXT.P4:- COPY OF THE DEPOSITION I N CROSS-EXAMINATION OF THE PETITIONER.

EXT.P5:- COPY OF THE LETTER ISSUED FROM THE KUNNATHUNADU TALUK HOUSING CO-OP. SOCIETY .

EXT.P6:- COPY OF THE ORDER DT.29.3.06 OF THE MUNSIFF'S COURT PERUMBAVOOR, IN EP. NO.125/05.

EXT.P7:- COPY OF THE NOTICES ISSUED FROM THE MUDAKUZHA SERVICE CO-OP. BANK.

/TRUE COPY/

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M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.15892 OF 2006 (P)

Dated this the 21 th day of December, 2006.

JUDGMENT

Petitioner is the judgment debtor and respondent the decree holder, in O.S.9/05. E.P.125/05 was filed for realisation of the decree debt by arrest and detention of petitioner. Petitioner pleaded no means. Under Ext.P6 order, executing court found that petitioner has sufficient means but he willfully refused to pay the same. An order of arrest was passed. Petitioner challenged the order in this petition filed under Article 227 of Constitution of India.

2. As per order dated 21.6.06, petitioner was directed to deposit Rs.20,000/- for payment to decree holder before the executing court. Petitioner reportedly deposited the amount.

3. Learned counsel appearing for petitioner and respondent were heard.

4. Learned counsel appearing for petitioner argued that though he has paddy fields, it is under order of attachment and though he is entitled to get amount in the business he could not realise the same and as a result he is not in a position to pay the decree debt. Learned counsel appreciated the evidence of decree holder and petitioner and found that petitioner has sufficient means to pay the decree debt. Evidence of judgment debtor shows that he had invested in business and he has 20 cents of paddy fields were three crop cultivation is possible. It is also admitted by petitioner that he is to get 1 ½ Lakhs by the sale of plywood and veneer. Appreciating the evidence, learned Munsiff found that petitioner has sufficient means. In the light of the evidence, I do not find any illegality or irregularity warranting interference in exercise of the revisional jurisdiction under Section 115 of Code of Civil Procedure.

5. Learned counsel appearing for petitioner submitted that petitioner may be permitted to pay the balance decree debt

in ten monthly installments. Considering the fact that Rs.20,000/- was deposited by petitioner, as per the order of this court, petitioner is permitted to pay the balance decree debt in ten equal monthly installments. The first installments falling due on 22.1.07. If petitioner commits default in payment of two consecutive installments, decree holder is entitled to seek his order of arrest from the executing court.

Petition dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

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